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3**In the Supreme Court of the United States****OCTOBER TERM, 1988****STEVE M. STEPHENS, PETITIONER****v.****UNITED STATES OF AMERICA**

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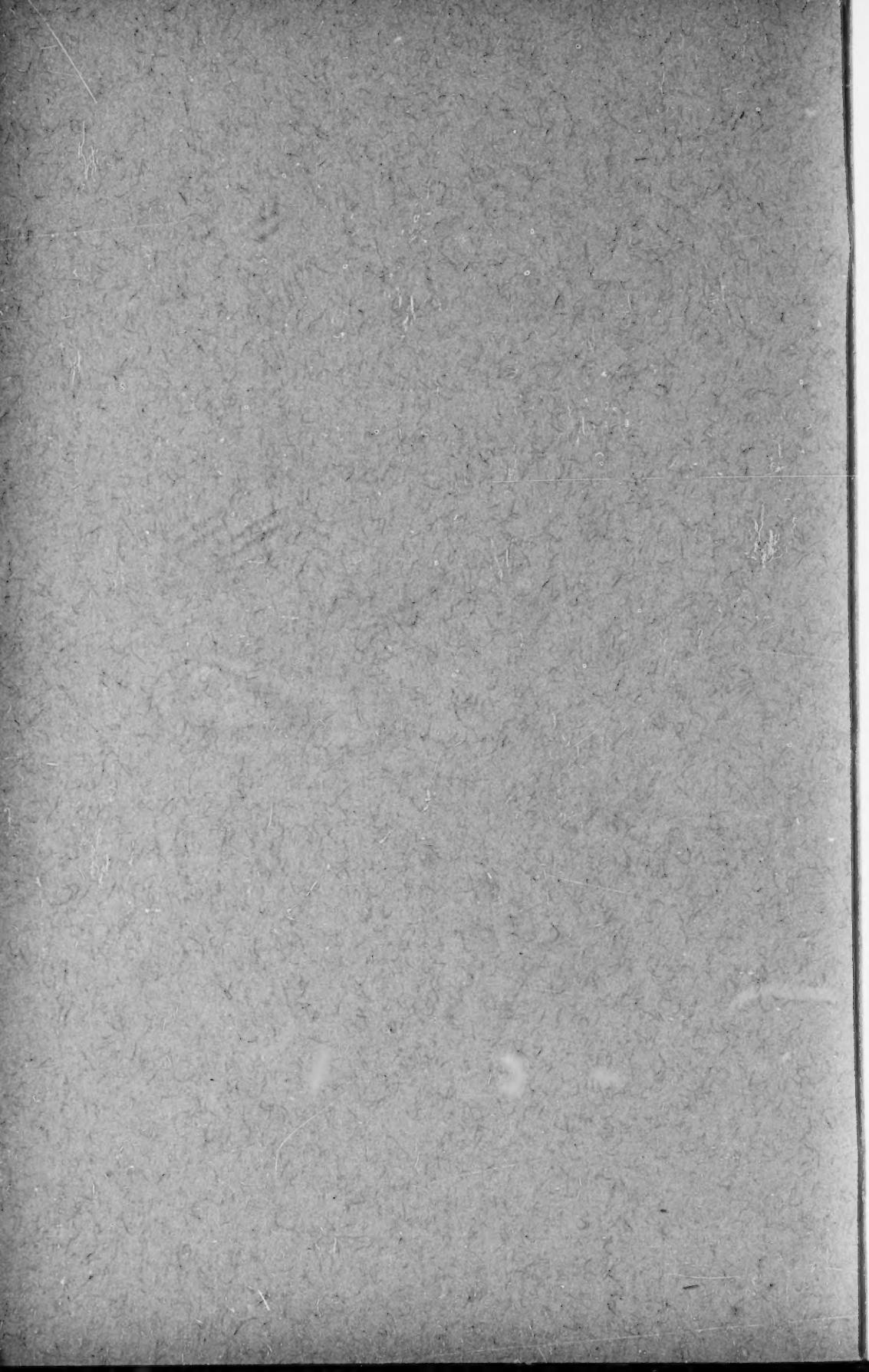
**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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**QUESTION PRESENTED**

Whether the evidence was sufficient to convict petitioner of engaging in a continuing criminal enterprise, in violation of 21 U.S.C. 848.

(I)



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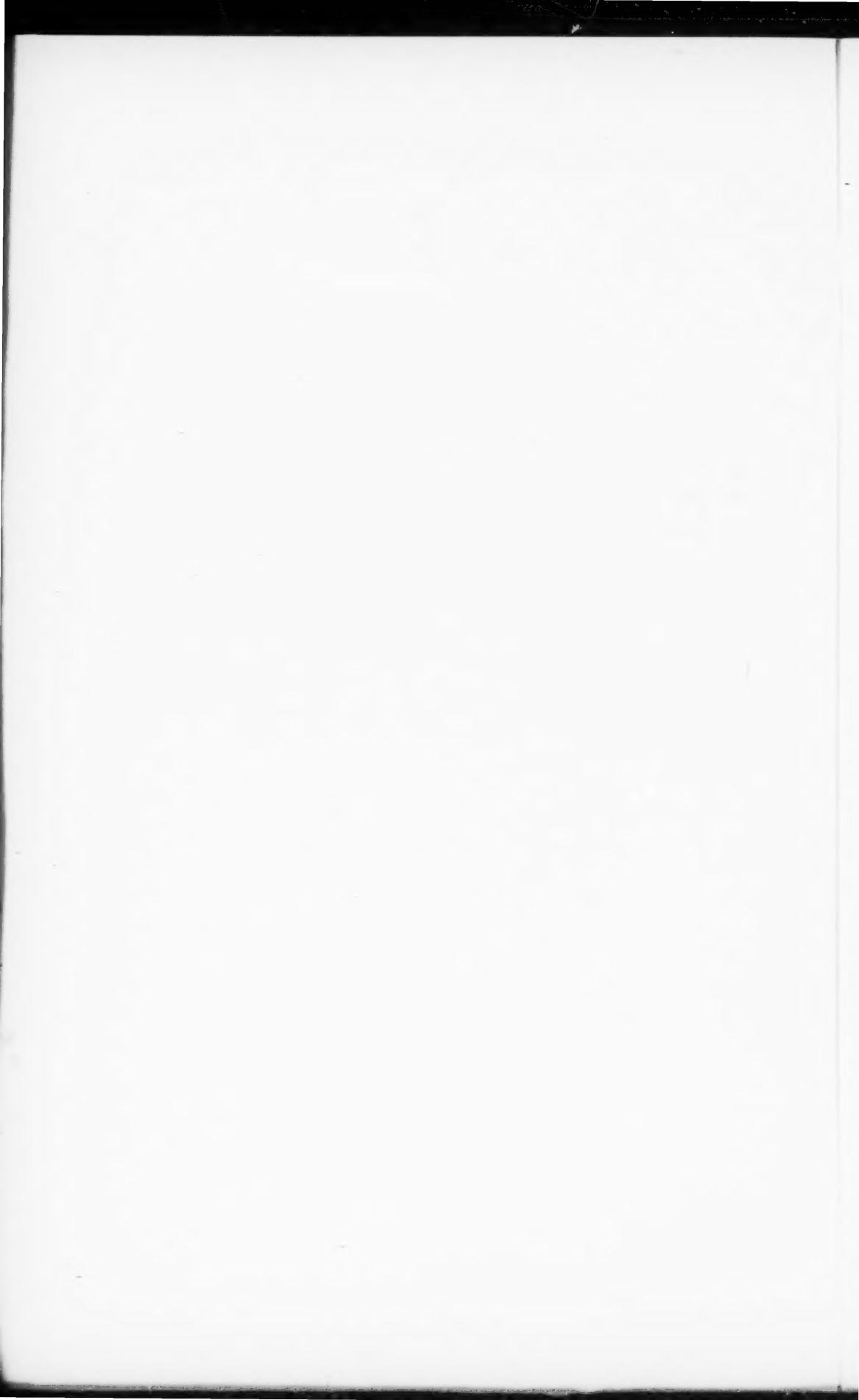
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**OPINION BELOW**

The opinion of the court of appeals (Pet. App. A1-A13) is unreported.

**JURISDICTION**

The judgment of the court of appeals was entered on January 27, 1988. A petition for rehearing was denied on April 7, 1988. The petition for a writ of certiorari was filed on June 14, 1988, and is therefore untimely under Rule 20.1 of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

Following a jury trial in the United States District Court for the Northern District of Oklahoma, petitioner was convicted of conspiring to possess heroin and cocaine with intent to distribute those substances, in violation of 21 U.S.C. 846, conspiring to impair and impede the Internal

Revenue Service, in violation of 18 U.S.C. 371, and engaging in a continuing criminal enterprise (CCE), in violation of 21 U.S.C. 848. The district court sentenced petitioner to 40 years' imprisonment.

1. The evidence at trial showed that petitioner distributed large amounts of heroin and cocaine over a long period of time. Petitioner ran a narcotics network that began its operations in California but branched out in 1984 to the Tulsa, Oklahoma, area. Petitioner's principal customers in Tulsa were Samuel Williams and James Lewis. Williams and Lewis, in turn, ran their own drug-distribution rings in Tulsa. Petitioner's business in Tulsa proved so successful that he moved to Oklahoma in 1985. Pet. App. A3-A4, A6-A7, A10-A11.

2. The court of appeals rejected petitioner's claim that the evidence was insufficient to convict him of the CCE charge. The court noted that the record contains "overwhelming evidence that [petitioner] sold substantial quantities of heroin and cocaine over a significant time period, both while [he] lived in California and after he moved to Oklahoma" (Pet. App. A3). In addition, the court found that the jury was entitled to draw the "reasonable inference" that petitioner moved to Oklahoma from Los Angeles "at least in part to be able to cooperate better with [Tulsa residents] Williams and Lewis, to whom he sold drugs both before and after the relocation" (*id.* at A4).

The court of appeals found (Pet. App. A5-A9) ample evidence that petitioner acted in a supervisory or managerial role over Williams's and Lewis's organizations. The court noted that petitioner "fronted" money for Williams's purchase of narcotics, provided a rental car for Williams and Lewis to travel from California to Tulsa, and accompanied Williams to a car dealership where petitioner helped Williams buy a new Corvette (*id.* at A6).

Petitioner also assumed the billing responsibility for a cellular telephone that was installed in the Corvette (*id.* at A7).

The court also observed that petitioner partially owned some properties held in Lewis's or Williams's name (Pet. App. A7). In addition, petitioner, Lewis, and Williams were one-third owners of a corporation established by petitioner (*ibid.*). Finally, the court of appeals noted that it was “[m]ost incriminating” that the mother of one of Lewis's distributors was forced to sell her home to petitioner for far less than its value to cover her son's drug debt to Lewis. Lewis had warned the woman that petitioner would harm or kill her son if the sale were not made (*ibid.*). In light of all the evidence, the court of appeals was “satisfied that a reasonable jury could find that [petitioner's] connection to Lewis and Williams and their organizations was more than as a seller to them, despite Lewis' and Williams' testimony that they never told [petitioner] the identities of the persons distributing drugs for them and never told their underlings who provided the drugs they sold” (*id.* at A7-A8). Accordingly, the court of appeals held that the evidence was sufficient to prove that petitioner acted in a “supervisory” role in concert with “five or more persons” as required by 21 U.S.C. (1982 ed.) 848(b)(2)(A).

#### ARGUMENT

Petitioner renews his claim that the evidence failed to support his conviction under 21 U.S.C. 848. As the court of appeals' analysis made clear, that contention is contrary to the record. In any event, the “primary responsibility for reviewing the sufficiency of the evidence to support a criminal conviction rests with the Court of Appeals” (*Hamling v. United States*, 418 U.S. 87, 124 (1974)). Thus, no further review is warranted.

1. Petitioner asserts (Pet. 28-34) that he merely supplied Williams and Lewis with narcotics. He claims, therefore, that he should not have been found to have supervised or managed the activities of five or more persons, as required by Section 848. He contends (Pet. 28-38) that the court of appeals' contrary finding is inconsistent with this Court's decision in *Jeffers v. United States*, 432 U.S. 137 (1977), and the Second Circuit's decision in *United States v. Mannino*, 635 F.2d 110 (1980).

Petitioner cites *Jeffers* and *Mannino* for the correct proposition that Section 848 requires proof of some sort of concerted action among at least five persons who are managed, organized, or supervised by the accused. The court of appeals was fully aware of that requirement; it noted that petitioner's CCE conviction "must stand or fall upon whether the jury could reasonably believe that [petitioner] had a supervisory role vis-a-vis Williams and Lewis and their organizations" (Pet. App. A5). Accordingly, the court of appeals' legal analysis is wholly consistent with *Jeffers* and *Mannino*.

At bottom, petitioner simply disagrees with the court of appeals' view of the evidence. The principles that apply to the "supervision" element of Section 848, however, support the court of appeals' analysis. First, it is well established that "the five persons involved need not have acted in concert at the same time, and the same type of relationship need not exist between the supervisor and each of the other persons involved." *United States v. Dickey*, 736 F.2d 571, 587 (10th Cir. 1984), cert. denied, 469 U.S. 1188 (1985). Moreover, Section 848 does not require personal contact between the leader and each underling, nor even that the leader be aware of the identities of his subordinates. *United States v. Rosenthal*, 793 F.2d 1214 (11th Cir. 1986), cert. denied, 480 U.S. 919 (1987); *United States v. Cruz*, 785 F.2d 399, 407 (2d Cir. 1986)

(upholding CCE conviction where members of enterprise included "streetcorner sellers" whom defendant may never have met); *United States v. Adamo*, 742 F.2d 927, 933-934 (6th Cir. 1984), cert. denied, 469 U.S. 1193 (1985). To impose a requirement of personal contact between a CCE defendant and each member of the enterprise "would permit major drug dealers to insulate themselves from the continuing criminal enterprise statute by dealing directly with only four or fewer underlings, a result Congress clearly could not have intended" (*Cruz*, 785 F.2d at 407).

Under the correct legal standard, there was sufficient evidence to support petitioner's conviction on the CCE charge. The evidence showed that petitioner had close business ties with Williams and Lewis. He advanced money to Williams with the repayment to be made from sales by Williams's associates. He provided the use of an automobile, he helped to pay for a new car for Williams, and he paid for the cellular telephone that was installed in Williams's car. In addition, petitioner had an ownership interest in several properties held in Lewis's or Williams's name, and Williams and Lewis had interests in a corporation established by petitioner. That evidence alone established that petitioner's relationship with Williams and Lewis was much more than simply that of supplier and customers.

It was undisputed that Williams and Lewis had several associates in their drug organizations. Alan Hill, Milton Birmingham, Johnny Reagor, and Richard Ward were Williams's principal cohorts in distributing heroin (Tr. 204-211, 235-236, 241, 245, 334-335, 379-381, 552-563). Lewis's main distributors were Milton Blakely and Ralph Macon (Tr. 962-963). Contrary to petitioner's claim that he dealt only with Williams and Lewis, the evidence showed that Alan Hill actively assisted petitioner in laundering drug money through the purchase of a Tulsa ranch (Tr. 103-107, 123, 745-765), that Richard Ward was introduced

to petitioner and rented a house from him (Tr. 245, 379-381), and that Milton Blakely was present at a meeting in petitioner's office during which petitioner received a drug payment from Charlene Blakely, Milton's wife (Tr. 169-171). Furthermore, Ralph Macon's mother was forced to sell her house to petitioner at a price far below market value in order to cover Macon's debt for drugs purchased from Lewis (Tr. 528-535). Finally, petitioner also dealt directly with Lucretia Jackson, an associate of Williams and Lewis, who made drug purchases from petitioner on at least three occasions (Tr. 956-959, 966-967).\* As the court of appeals found, that evidence was sufficient to show that petitioner organized, supervised, or managed at least five persons in connection with his narcotics dealings.

### CONCLUSION

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

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\* The evidence also showed that petitioner was personally involved in distributing drugs with persons other than those connected with Lewis or Williams. In 1982, California officials seized petitioner's narcotics sales records. Those records revealed that eight persons owed petitioner drug debts (Tr. 587-589, 597-601, 603, 606, 613-619, 623-624, 628-630, 636-642, 644, 660-662, 664, 707-718). In addition, the evidence showed that two messengers made drug deliveries to Williams on petitioner's behalf (Tr. 227-228, 231-232, 326, 329).

